



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

BJG  
Docket No: 3452-97  
22 April 1999

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: LTCOL [REDACTED] USMCR, [REDACTED]  
REVIEW OF NAVAL RECORD (PARTIAL RECONSIDERATION)

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Subject's ltr dtd 31 Jan 97 w/attachments  
(2) HQMC PERB memo dtd 2 Feb 98 w/encl  
(3) Subject's ltr dtd 29 Dec 98 w/encl  
(4) HQMC MMER memo dtd 18 Feb 99  
(5) Subject's ltr dtd 26 Mar 98 (sic)  
(6) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the fitness report for 26 June to 31 December 1994, a copy of which is at Tab A to enclosure (1). The Board originally denied this request on 7 February 1996 (Tab B to enclosure (1)). He added a new request to remove his fitness reports for 1 January 1995 to 12 January 1996 and 13 January to 20 April 1996, copies of which are at Tabs C and D to enclosure (1), respectively. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of these two contested fitness reports.

2. The Board, consisting of Messrs. Bartlett and Zs Salman and Ms. Schnittman, reviewed Petitioner's allegations of error and injustice on 15 April 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. By letter at enclosure (3), Petitioner responded to the PERB report at enclosure (2) by reiterating that he wanted all three of the contested fitness reports removed. He stressed

that all three were signed by the same reporting senior. He included a copy of a letter of support from a Marine Corps colonel who was familiar with the reporting senior. This letter, which was not available to the Board when Petitioner's prior case was considered, had been submitted with enclosure (1).

c. In correspondence attached as enclosure (4), the head of the HQMC Performance Evaluation Review Branch, Personnel Management Division, Manpower and Reserve Affairs Department (MMER) stated that "...nothing new or material was found that would cause the PERB to either rehear the case or revisit its prior decision."

d. In enclosure (5), Petitioner's reply to enclosure (4), he contended that the statement he had provided from a Marine Corps colonel was "clear and substantial evidence" of an injustice warranting removal of his fitness report for 26 June to 31 December 1994.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and despite the contents of enclosure (4), the Board finds the existence of an injustice warranting removal of Petitioner's fitness report for 26 June to 31 December 1994. In this connection, they particularly note the Marine Corps colonel's letter. In view of the above, the Board directs the following corrective action.

#### RECOMMENDATION:

a. That Petitioner's record be corrected by removing therefrom the following fitness report and related material:

Date of Report	Reporting Senior	Period of Report	
		From	To
14Feb95	1. [REDACTED] SMC	26Jun94	31Dec94

b. That any memorandum filed in Petitioner's naval record to replace the previously removed fitness reports for 1 January 1995 to 12 January 1996 and 13 January to 20 April 1996 be removed; and that there be inserted in his naval record ONE memorandum in place of all three removed reports for 26 June 1994 through 20 April 1996, containing appropriate identifying data; that the memorandum state that the portion of Petitioner's fitness report record for 26 June 1994 to 20 April 1996 has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inferences to the nature of the removed material.

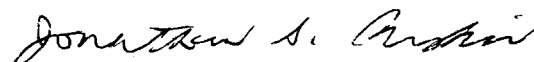
c. That the magnetic tape maintained by Headquarters Marine Corps be corrected accordingly.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

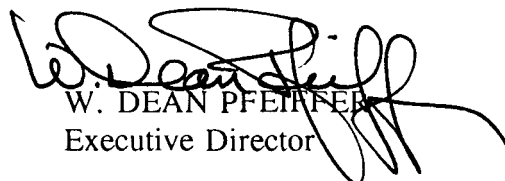
e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
JONATHAN S. RUSKIN  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

3452-97

IN REPLY REFER TO:  
1610  
MMER  
2 Feb 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF LIEUTENANT COLONEL  
[REDACTED] USMCR

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 30 Jan 98

1. As evidenced by the enclosure, PERB removed from Lieutenant Colonel [REDACTED] official military record, the fitness reports for the periods 950101 to 960112 (CH) and 960113 to 960420 (CH).

2. Lieutenant Colonel [REDACTED] has been informed that the PERB did not authorize or direct a modification to the reporting chain; nor did they institute an investigation into the matter detailed in his petition.

[REDACTED]

Head, Performance Evaluation  
Review Branch  
Personnel Management Division  
By direction of  
the Commandant of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20380-1775

IN REPLY REFER TO:  
1610  
MMER/PERB  
30 Jan 98

From: Commandant of the Marine Corps  
To: Lieutenant Colonel [REDACTED] CR  
[REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11B  
(b) MCO P1610.7D

1. Per reference (a), the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness report(s):

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
24 Mar 96	[REDACTED]	950101 to 960112 (CH)
9 Jul 96	[REDACTED]	960113 to 960420 (CH)

2. There will be inserted in your Naval record a memorandum in place of the removed report. The memorandum will contain appropriate identifying data concerning the report and state that it has been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the report or the events which may have precipitated it, unless such events are otherwise properly a part of the official record. The Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be corrected accordingly.

3. The PERB does not have the authority to either "authorize" or "direct" the next higher officer in your chain of command (Colonel [REDACTED]) to assume Reporting Senior authority. Additionally, it must be emphasized that since Lieutenant Col [REDACTED] was not relieved of command or otherwise precluded from authoring the fitness reports at issue, reference (b) contains no provision for a modification of the reporting chain.

Subj: CORRECTION OF NAVAL RECORD

4. Since the Performance Evaluation Review Board is not an investigative body, your request for an investigation into the matter detailed in your petition cannot be accommodated. This is an issue more appropriately addressed to the Inspector General of the Marine Corps.

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By direction



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

3452-97

IN REPLY REFER TO:  
1600  
MMOA-4  
13 Feb 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR PETITION FOR LIEUTENANT COLONEL [REDACTED]  
[REDACTED] USMCR

Ref: (a) MME'R Request for Advisory Opinion in the case of  
Lieutenant Colonel [REDACTED]  
USMCR of 5 Feb 98

1. Recommend disapproval of Lieutenant Colonel [REDACTED] implied request for removal of his failures of selection.
2. Per the reference, we reviewed Lieutenant Colonel [REDACTED] record and his petition. In his petition, he requested removal of the fitness reports for the periods of 950101 to 960112 and 960113 to 960120 and implied a request for removal of his failures of selection on the FY96 and FY97 boards. The Performance Evaluation Review Board (PERB) reviewed the petition and directed removal of the reports.
3. The FY96 board convened 11 April 1995. Both of the removed reports fall after that date. Therefore, the PERB's action has no bearing on the FY96 board.
4. The FY97 board convened on 2 April 1996. Therefore, only the report for the period of 950101 to 960402 would have been considered. In our opinion, this report represents an improvement in performance over the previous reporting period. Thus, we consider the factors contributing to the FY96 failure of selection, not the removed report, as the primary competitive concerns.
5. We note for clarification that Lieutenant Colonel [REDACTED] was released from the Active Reserve program in September 1996. He was selected for his present grade on the FY98 USMCR Lieutenant Colonel Selection Board (other than Active Reserve Category).
6. The record now appears as it would have during the FY96 board. Our advisory opinion of 6 October 1995 addressed the areas of competitive concern as the record appeared before that board.

Subj: BCNR PETITION FOR LIEUTENANT COLONEL [REDACTED]  
[REDACTED] USMCR

Without any change in the record considered by that board, we have no reason to believe Lieutenant Colonel [REDACTED] would have been selected. Therefore, we recommend disapproval of Lieutenant Colonel [REDACTED] implied request for removal of his failures of selection.

[REDACTED]  
Colonel, U. S. Marine Corps  
Head, Officer Assignment Branch  
Personnel Management Division





DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

3452-97

IN REPLY REFER TO:

1610  
MMER  
18 Feb 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF MAJOR [REDACTED]  
[REDACTED] USMCR

Ref: (a) Your Memorandum of 22 Jan 99  
(b) CMC Memo for BCNR 1610 MMER/PERB of 14 Sep 95;  
Subj: Marine Corps Performance Evaluation Review  
Board (PERB) Advisory Opinion on BCNR Application in  
the Case of Major [REDACTED] USMCR  
(c) BCNR ltr to [REDACTED] 27 Feb 96

1. In reference (a), we have been asked to consider Major  
[REDACTED] request for the removal of his fitness report for the  
period 940626 to 941231 (AR).

2. As documented in reference (b), the PERB considered the fore-  
going issue on 31 August 1995 and effected limited corrective  
action. BCNR upheld those findings and so informed Major [REDACTED]  
via reference (c).

3. We find nothing new or material that would cause the PERB to  
either rehear the case or revisit its prior decision.

[REDACTED]  
[REDACTED]  
[REDACTED]  
Head, Performance Evaluation  
Review Branch  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps



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3452-97

IN REPLY REFER TO:

1600  
MMA-4  
7 Mar 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR PETITION FOR LIEUTENANT COLONEL [REDACTED]  
[REDACTED] USMCR

Ref: (a) MMER Request for Advisory Opinion in the case of  
Lieutenant Colo [REDACTED]  
USMCR of 26 Feb 99

1. Recommend disapproval of Lieutenant Colonel [REDACTED]'s request for removal of his failures of selection.
2. Per the reference, we reviewed Lieutenant Colonel [REDACTED] record and his petition. The (AR) fitness report for the period of 940626 to 941231 was not viewed by the FY96 USMCR(AR) Lieutenant Colonel Board. Therefore, we do not believe its removal would have any impact on his failure of selection. Consequently, we recommend disapproval of his request to backdate his date of rank.

[REDACTED]  
[REDACTED]  
Lieutenant Colonel, U. S. Marine Corps  
Reserve Affairs Manpower Branch  
Reserve Affairs Division